

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Northern
States Power Company d/b/a Xcel Energy
for Authority to Increase Rates for Electric
Service in Minnesota

PROTECTIVE ORDER

INTRODUCTION:

1. The purpose of this Protective Order ("Order") is to facilitate the disclosure of documents and information during the course of these proceedings and to protect trade secret information and nonpublic information (Trade Secret Information or Nonpublic Data).

Access to and use of Trade Secret information and nonpublic data in this proceeding by parties other than government agencies shall be strictly controlled by the terms of this Order. The parties other than government agencies are herein referred to as parties, persons or entities.

The government agencies with access to Trade Secret Information and Nonpublic Data, which include the Minnesota Public Utilities Commission ("Commission"), the Office of Administrative Hearings ("OAH"), the Office of the Attorney General (OAG) the Minnesota Department of Commerce, including the Minnesota Office of Energy Security ("Department" or "OES"), the Office of the Attorney General-Residential and Small Business Utilities Division ("OAG-RUD"), the Minnesota Department of Administration, (Administration) the Minnesota Department of Administration, Office of Enterprise Technology ("OET") and the Minnesota State Historical Society, are subject to various laws and rules, including the Minnesota Government Data Practices Act ("MGDPA"), the records retention requirements of Minn. Stat. §§ 138.163-138.226, as well as agency-specific rules and procedures, including the Commission's September 1, 1999, *Revised Procedures for Handling Trade Secret and Privileged Data* (Commission's Procedures).

2. This matter was referred to the Office of Administrative Hearings by the Minnesota Public Utilities Commission (Commission) for a contested case hearing in its Notice and Order for Hearing issued on December 23, 2008, in the above-entitled docket.

3. During the proceeding in this matter, Parties may file, request and use trade secret information or nonpublic data, as defined by Minnesota Statutes Chapter 13.01 *et seq.*

4. Minnesota Statutes § 14.60, subdivision 2, allows the Administrative Law Judge in a contested case to conduct a closed hearing to discuss trade secret or nonpublic data, issue necessary Protective Orders, and seal all or part of the hearing record.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. (a) Trade Secret Information and Nonpublic Data. All Trade Secret Information and/or Nonpublic Data shall be furnished pursuant to the terms of this Protective Order, and shall be treated by all persons accorded access thereto pursuant to this Protective Order as constituting confidential, competitive, trade secret, and business information, and shall be used solely for the purpose of this proceeding and solely in accordance with this Protective Order, and shall not be used or disclosed for any other purpose or in any other manner. In accordance with the Commission's September 1, 1999, *Revised Procedures for Handling Trade Secret and Privileged Data* (Commission's Procedures), all documentary material claimed to be Trade Secret Information or Nonpublic Data shall be marked substantially as follows by stamping each individual page with the designation "**CONTAINS TRADE SECRET INFORMATION— NONPUBLIC DATA.**" For purposes hereof, notes made pertaining to or prepared as the result of a review of Trade Secret Information or Nonpublic Data shall be subject to the terms of this Protective Order. Any Trade Secret Information or Nonpublic Data received in photographic, digital or electronic formats shall be identified as protected by the producing party by means appropriate to the medium and shall be handled by the recipient in a manner suitable to protect its confidentiality.

(b) Use of Trade Secret or Nonpublic Data and Persons Entitled to Review. All Trade Secret Information or Nonpublic Data made available pursuant to this Protective Order shall be given solely to counsel for the requesting party or other authorized persons who are designated by counsel as being the party's experts or witnesses in this proceeding and who execute Exhibit A in a timely manner prior to their receipt of the Trade Secret Information and/or Nonpublic Data. Trade Secret Information and/or Nonpublic Data shall not be used or disclosed except for purposes of this proceeding and as needed for all subsequent appeals of the final order in this proceeding. The Trade Secret Information and/or Nonpublic Data may not be used or referenced in other proceedings in Minnesota or in other jurisdictions. Unless otherwise provided in this Protective Order, all Trade Secret Information will be safeguarded and handled in accordance with the Commission's Procedures.

(c) Nondisclosure Protective Order. Prior to giving access to Trade Secret Information and/or Nonpublic Data as contemplated in paragraphs (a)-(b) above to any expert or witness, whether or not such expert or witness is a person designated to testify in any such proceeding, counsel for the party seeking review of the Trade Secret Information and/or Nonpublic Data shall deliver a copy of this Protective Order to such person; and prior to disclosure such person shall agree in writing to comply with and be bound by this Protective Order. In connection therewith, Trade Secret Information and/or Nonpublic Data shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein

as Exhibit A and until the 48-hour notice required by this paragraph has been given. The Exhibit A Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such Nondisclosure Agreement shall be delivered to counsel for the providing party at least 48 hours, excluding weekends and holidays, prior to the expert or witness gaining access to the Trade Secret Information and/or Nonpublic Data. If counsel for the providing party notifies the Administrative Law Judge of an objection within the 48 hours, no Trade Secret Information and/or Nonpublic Data shall be provided to the expert or witness until so ordered by the Administrative Law Judge.

2. Government Agencies. The government agencies are not subject to the terms of this Protective Order except, while this matter is pending before the OAH and as to matters within the jurisdiction of the OAH, government agencies are subject to this paragraph 2.

(a) Definition of Trade Secret Information and Nonpublic Data. "Trade Secret Information and Nonpublic Data" shall be limited to "trade secret information" as defined at Minn. Stat. § 13.37, subd. 1(b), "nonpublic data" as defined at Minn. Stat. § 13.02, subd. 9, and "private data on individuals" as defined at Minn. Stat. §13.02, subd. 12. This definition applies to both government agencies and parties.

(b) Conflicts. To the extent this Protective Order conflicts with or omits a matter otherwise required by either the MGDPA or Commission Procedures, the requirements of the MGDPA or Commission Procedures shall control. Any provision of this Protective Order not consistent with this paragraph 2 shall be of no effect with respect to the government agencies.

(c) Experts. A government agency may not provide Trade Secret Information and Nonpublic Data to outside experts providing assistance on this matter until the outside experts have signed Exhibit "A." Said experts shall comply with the terms of this Protective Order except where contrary to the requirements of the MGDPA or Commission Procedures.

(d) Challenge to Trade Secret Designation. Notwithstanding, and in lieu of, any requirements of the MGDPA to the contrary, the Administrative Law Judge, upon a request by or to any party or government agency, and ten (10) days prior notice or such period as is determined by the Administrative Law Judge, may hold a hearing *in camera* and remove a designation of Trade Secret Information or Nonpublic Data.

(e) Verbal Disclosure. Notwithstanding, and in lieu of, any requirements of the MGDPA to the contrary, Trade Secret and/or Nonpublic Data may be verbally disclosed by government agencies during depositions or hearings in this matter upon prior notice to and agreement of the disclosing party or authorization by the Administrative Law Judge.

(f) Transcripts. Notwithstanding, and in lieu of, any requirements of the MGDPA to the contrary, each disclosing party or government agency may identify portions of depositions or hearing transcripts that disclose Trade Secret Information and/or Nonpublic Data for up to three business days after the transcript is made available to them, and the court reporter shall mark those portions of transcript “**TRADE SECRET INFORMATION—NONPUBLIC DATA,**” consistent with the Commission’s Procedures.

3. Challenge to Non-Publicity, Trade Secret Designation or Other Special Requests. This Protective Order shall not be construed as a ruling on the discoverability, confidentiality or trade secret designation of any information or document. While this matter is pending before the OAH, any party at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents or other matters that have been designated as Trade Secret Information or Nonpublic Data removed from the protective requirements of this Protective Order or to have them handled in a manner differently than described in this Protective Order (either for greater or lesser confidentiality protections). If the trade secret or nonpublic nature of this information is challenged, resolution of the issue shall be made by the Administrative Law Judge after proceedings *in camera* which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such trade secret or nonpublic matter shall be present. The record of such *in camera* hearings shall be marked “**TRADE SECRET INFORMATION—NONPUBLIC DATA,**” unless the ALJ determines that the proceeding should not be classified as involving Trade Secret Information or Nonpublic Data.

4. Use of Trade Secret Information and/or Nonpublic Data in Comments or Pleadings. Where reference to Trade Secret Information and/or Nonpublic Data is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Trade Secret Information and/or Nonpublic Data shall be placed in a separate “Nonpublic” copy of the pleading or brief and submitted to the Commission or Office of Administrative Hearings pursuant to the terms of the Commission’s Procedures. This “Nonpublic” copy shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement. All the protections afforded in this Protective Order apply to materials prepared and distributed under this paragraph.

5. Use of Trade Secret Information and/or Nonpublic Data in Depositions. If, in the course of depositions, counsel for any party concludes that testimony or exhibits will involve Trade Secret Information and/or Nonpublic Data, counsel shall request that the court reporter record such testimony in a confidential transcript that is marked “**TRADE SECRET INFORMATION—NONPUBLIC DATA.**” All Exhibits which have been marked as involving Trade Secret Information and/or Nonpublic Data shall be attached to the confidential transcript and marked consistent with the Commission’s Procedures. Each party has the right to identify a transcript or exhibits as including

Trade Secret Information and/or Nonpublic Data pursuant to this paragraph for up to three business days after the deposition is completed.

6. Use of Trade Secret Information or Nonpublic Data in Hearings. The Receiving Party shall not use Trade Secret and/or Nonpublic Data in a hearing without first (a) providing prior notice to the disclosing party regarding the information to be used and (b) conferring with the disclosing party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to persons not otherwise entitled to receive such information. If the parties cannot reach agreement regarding the use of such information, then the dispute shall be submitted to the Administrative Law Judge or the Commission before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Trade Secret and/or Nonpublic Data on oral testimony, cross-examination or argument except in accordance with this paragraph.

7. Public Summaries. To the extent required by the Commission's Procedures, the providing party shall prepare a written summary of the Trade Secret Information or Nonpublic Data referred to in this Order to be placed on the public record.

8. Return. Unless otherwise ordered, all Trade Secret and/or Nonpublic Data, including transcripts of any depositions to which a claim of "trade secret" or "nonpublic" status is made, shall remain under seal, shall continue to be subject to the protective requirements of this Protective Order, and, except as provided in Paragraph 10, shall be returned to counsel for the disclosing party within 30 days after final settlement or conclusion of the applicable matter including administrative or judicial review thereof, unless otherwise agreed by the disclosing party.

9. Preservation of Non-Publicity. All persons who may be entitled to receive, or who are afforded access to any Trade Secret and/or Nonpublic Data by reason of this Protective Order shall neither use nor disclose the Trade Secret and/or Nonpublic Data for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of these proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Trade Secret Information and/or Nonpublic Data secure and in accordance with the purposes and intent of this Protective Order.

10. Reservation of Rights. The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or documents or cross-examination on the grounds of relevancy or materiality.

11. Inadvertent Disclosure. No party shall have waived its right to designate any documents, data, information, studies, or other materials as Trade Secret Information or Nonpublic Data by inadvertent disclosure, provided the disclosing party thereafter gives written notice to the recipient(s) of such information that it should have been designated as Trade Secret Information or Nonpublic Data. From and after

receipt of such notice, the previously disclosed information subsequently identified as Trade Secret Information or Nonpublic Data shall be treated as Trade Secret Information or Nonpublic Data for purposes of this Protective Order.

Dated: February 12, 2009

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Northern
States Power Company d/b/a Xcel Energy
for Authority to Increase Rates for Electric
Service in Minnesota

EXHIBIT A
NONDISCLOSURE AGREEMENT

I, the undersigned, hereby acknowledge that I have read the attached Protective Order dated February 12, 2009, in Minnesota Public Utilities Commission Docket No. E-002/GR-08-1065, OAH Docket 3-2500-20148-2, and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not authorized to receive materials designated **“TRADE SECRET INFORMATION—NONPUBLIC DATA”** under the terms of said Protective Order, or any copies or extracts of information derived therefrom, which have been disclosed to me. I further agree to use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing said Protective Order.

Date: _____, 2009

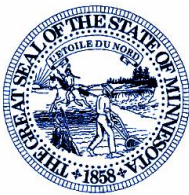
Signature

Type or Print Name

Address

Name of Employer

Name of Party



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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February 12, 2009

To All Parties on the Attached Service List as of February 12, 2009

Re: *In the Matter of the Application of Northern States Power
Company d/b/a Xcel Energy for Authority to Increase Rates for
Electric Service in Minnesota*
OAH Docket No. 3-2500-20148-2

Dear Parties:

Enclosed herewith and served upon you as indicated on the attached service list is the
Administrative Law Judge's Protective Order in the above entitled matter.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Telephone: (651) 361-7848

KDS:nh

Encl.

cc
Docket Coordinator

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for
Authority to Increase Rates for Electric Service in Minnesota

Administrative Law Judge's Service List as of February 12, 2009

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
600 NORTH ROBERT STREET
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CERTIFICATE OF SERVICE

Case Title: In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota	OAH Docket No.: 3-2500-20148-2
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Nancy J. Hansen certifies that on the 12th day of February, 2009, she served a true and correct copy of the attached Protective Order as indicated on the attached service list or by placing it in the United States mail with postage prepaid, addressed to the following individuals:

See the attached Administrative Law Judge's Service List as of February 12, 2009